

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH A. SOMERS,

Petitioner,

No. CIV S-05-0741 MCE EFB P

vs.

BPT COMMISSIONER M. PEREZ,  
et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On January 8, 2007, plaintiff filed a motion for an order directing “Warden Clarke or any of his employees LTA Turner [sic] from concocting a false charge because plaintiff was attempting to comply with this court’s orders in prosecuting this action.” In his motion, plaintiff refers to his simultaneously filed motion for the appointment of counsel, wherein he argues that “Librarian (Thomas) is retaliating” against him for bringing this suit. On March 14, 2007, the court directed defendants to file a response to plaintiff’s motion, which has since been filed.

The court construes plaintiff’s claim as stating that Library Technician Assistant (LTA) Thomas is preventing him access to the law library in violation of his constitutional right of access to the courts.

1 Plaintiff has the burden of demonstrating either probable success on the merits of his  
2 claims and the possibility of irreparable injury, or serious questions regarding the merits and a  
3 balance of hardships tipping sharply in his favor. *Miss Universe, Inc v. Flesher*, 605 F.2d 1130,  
4 1134 (9th Cir. 1970). He has demonstrated neither. Only parties or non-parties with notice who  
5 are shown to be in active concert or participation with defendants may be enjoined under Federal  
6 Rule of Civil Procedure 65. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112  
7 (1969). None of the individuals named are parties and plaintiff makes no showing they have  
8 acted in concert or participated with defendants to violate plaintiff's rights. Plaintiff is not  
9 entitled to a preliminary injunction against Warden Clarke or LTA Thomas.

10 For these reasons, it is RECOMMENDED that plaintiff's January 8, 2007, motion be  
11 denied.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after  
14 being served with these findings and recommendations, any party may file written objections  
15 with the court and serve a copy on all parties. Such a document should be captioned "Objections  
16 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the  
17 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158  
18 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: August 27, 2007.

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22 EDMUND F. BRENNAN  
23 UNITED STATES MAGISTRATE JUDGE  
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